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10/773,233	02/09/2004	Takahiro Nobukiyo	Y2238.0057	3193

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EXAMINER	
VO, NGUYEN THANH	

ART UNIT	PAPER NUMBER
2618	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/773,233	NOBUKIYO ET AL.	
	Examiner	Art Unit	
	NGUYEN VO	2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-27,32-51,54-66 and 71-82* is/are pending in the application.

4a) Of the above claim(s) *5,6,9,11,12,20-27,36-51,56,57,60,62,63 and 75-82* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3,4,7,10,13,16-19,32-35,54,55,58,61,64 and 71-74* is/are rejected.

7)☒ Claim(s) *8,14,15,59,65 and 66* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 3, 18, 34, 54, 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller (US 2003/0189915).

As to claims 3, 54, Miller discloses a mobile communication system for performing a high speed data transfer path for a mobile station and performing resource management on the high speed data transfer path (see paragraph [0011]), the mobile communication system comprising means which measures a time rate at which data is sent on the data transfer path (see paragraphs [0035], [0036], [0041]); and means which performs the resource management on the basis of a result of the measurement (see paragraphs [0035], [0036], [0041]), the resource management being performed on the basis of the time rate at which data was sent on the data transfer path (see paragraphs [0035], [0036], [0041]).

As to claim 18, it is rejected for similar reasons as set forth in claim 3 above. In addition, Miller discloses a mobile communication system, comprising a base station (see node B in paragraphs [0035], [0041]); a mobile station for which a shared channel

shared with other mobile stations is set in order to perform data transmission with said base station (see paragraph [0015]); and a radio network controller (see the CRNC in paragraphs [0035], [0041]) which notifies said base station of at least resource allocation information of said shared channel (see paragraph [0041]), wherein means, which measures a time rate at which data is sent on said shared channel, is included in said base station (see paragraphs [0035], [0041]).

As to claims 34, 73, they are rejected for similar reasons as set forth in claim 18 above.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 4, 7, 10, 13, 16-17, 32-33, 55, 58, 61, 64, 71-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art admitted by applicant on pages 1-7 of the present specification (hereinafter simply referred to as the admitted prior art) in view of He (US 6,330,429).

As to claims 4, 55, the admitted prior art discloses a mobile communication system for performing a resource management including transmission power control to form a high speed data transfer path for a mobile station (see the present specification, page 2 lines 4-11; page 4 line 26 to page 5 line 7), the mobile communication system comprising means which measures a state of use of the transmission power (see the present specification, page 4 line 26 to page 5 line 7; in this case, measuring an average value of transmission power as stated on page 5 lines 3-7 reads on "measures a state of use of transmission power" as claimed); and means which performs the resource management on the basis of a result of the measurement (see the present specification, page 2 lines 4-11; page 4 line 1 to page 5 line 7). The admitted prior art does disclose calculating an amount of use of the transmission power on the basis of a data transfer time to the data transfer path, and performing the resource management on the basis of the average value as claimed (see the present specification, page 4 line 1 to page 5 line 7). The admitted prior art fails to disclose the mobile communication system comprising means which measures a state of use of the codes; and means which performs the resource management on the basis of a result of the measurement. The admitted prior art, however, admits that it is conceivable to calculate an average number of use of codes and inform the calculated value from the base station to the

RNC so that the RNC performs the resource management on the basis of a result of the measurement (see page 6 lines 1-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the conventional resource allocation control with means which measures a state of use of the codes, and means which performs the resource management on the basis of a result of the measurement (as suggested by the admitted prior art), in order to optimize the resource allocation in the communication system.

Still as to claim 4, the admitted prior art fails to disclose measuring number of use of codes during the data transfer time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 7, 58, see the admitted prior art, page 6 lines 6-10.

As to claims 10, 61, see the admitted prior art, page 4 line 26 to page 5 line 7.

As to claims 13, 64, since the admitted prior art discloses calculating average transmission power (see the present specification, page 4 line 26 to page 5 line 7), the admitted prior art would inherently disclose calculating the data transfer time in a measurement period set in advance as claimed.

As to claim 16, the admitted prior art discloses a mobile communication system, comprising a base station (see the present specification, page 1 line 25); a mobile station for which a shared channel shared with other mobile stations is set in order to perform data transmission with said base station (see page 1 lines 12-23); and a radio network controller which notifies said base station of at least the number of allocated codes which is a maximum value of the number of codes of said shared channel (see page 3 lines 3-7). The admitted prior art fails to disclose a means, which measures an average number of use of the codes in a data transmission time on said shared channel, is included in said base station. The admitted prior art, however, admits that it is conceivable to calculate an average number of use of codes (performed in the base station) and inform the calculated value from the base station to the RNC so that the RNC performs the resource management on the basis of a result of the measurement (see page 6 lines 1-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the conventional resource allocation control with means which measures a state of use of the codes, and means which performs the resource management on the basis of a result of the measurement (as suggested by the admitted prior art), in order to optimize the resource allocation in the communication system.

Still as to claim 16, the admitted prior art fails to disclose measuring number of use of codes during the data transfer time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 32, 71, they are rejected for similar reasons as set forth in claim 16 above. In addition, see one or more antennas in figure 9 of He.

As to claim 17, the admitted prior art discloses a mobile communication system, comprising a base station (see the present specification, page 1 lines 24-25); a mobile station for which a shared channel shared with other mobile stations is set in order to perform data transmission with said base station (see page 1 lines 12-23); and a radio network controller (see page 1 lines 1-2) which notifies said base station of at least allocated power which is a maximum value of power of said shared channel (see page 3 lines 5-7), wherein means, which measures an average amount of use of the power in a data transmission time on said shared channel, is included in said base station (see page 4 line 26 to page 5 line 7). The admitted prior art fails to disclose measuring power during the data transmission time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 33, 72, they are rejected for similar reasons as set forth in claim 17 above. In addition, see one or more antennas in figure 9 of He.

6. Claims 19, 35, 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Miller and He (US 6,330,429).

As to claim 19, the admitted prior art discloses a communication system comprising a base station (see the present specification, page 1 lines 24-25); a mobile station for which a shared channel shared with other mobile stations is set in order to perform data transmission with said base station (see page 1 lines 12-23); and a radio network controller which notifies said base station of the number of allocated codes which is a maximum value of the number of codes of said shared channel and allocated power which is a maximum value of power of said shared channel (see page 3 lines 3-7), wherein, means, which measures an average amount of use of the power in a data transmission time on said shared channel, is included in said base station (see page 4 line 26 to page 5 line 7). The admitted prior art fails to disclose means, which measures an average number of use of the codes in a data transmission time on said shared channel, is included in said base station as claimed. The admitted prior art, however, admits that it is conceivable to calculate an average number of use of codes (performed in the base station) and inform the calculated value from the base station to the RNC so that the RNC performs the resource management on the basis of a result of the measurement (see page 6 lines 1-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the conventional resource allocation control with means which measures a state of use of the codes, and means

which performs the resource management on the basis of a result of the measurement (as suggested by the admitted prior art), in order to optimize the resource allocation in the communication system.

Still as to claim 19, the admitted prior art fails to disclose means, which measures a time rate at which data is sent on said shared channel, is included in said base station as claimed. Miller discloses means, which measures a time rate at which data is sent on said shared channel, is included in a base station (see paragraphs [0035], [0041]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Miller to the admitted prior art, in order to optimize the resource allocation in the communication system (as suggested by Miller at paragraph [0041]).

Still as to claim 19, the admitted prior art as modified by Miller fails to disclose measuring number of use of codes and the use of the power during the data transmission time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 35, 74, they are rejected for similar reasons as set forth in claim 19 above.

Allowable Subject Matter

7. Claims 8, 14-15, 59, 65-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 3-4, 7-8, 10, 13-19, 32-35, 54-55, 58-59, 61, 64-66, 71-74 have been considered but are moot in view of the new ground(s) of rejection.

Independent Claims 3, 18, 34, 54 and 73

Regarding amended independent claim 3, applicant argues that Miller fails to disclose the newly-added limitation "the resource management being performed on the basis of the time rate at which data was sent on the data transfer path". The examiner, however, disagrees. Miller clearly does disclose the resource management being performed on the basis of the time rate at which data was sent on the data transfer path (see paragraphs [0035], [0036], [0041]).

Regarding amended independent claims 18, 34, 54 and 73, they are discussed for the same reasons as set forth in amended independent claim 3 above.

Independent Claims 17, 33 and 72

Regarding independent claim 17, applicant argues that although He discloses "real time" measurement at column 8 lines 25-31, it is not clear that this means measurement during a data transfer time. The examiner, however, disagrees. Since

the signal parameters are measured at real-time (see He, column 8 lines 25-31), the measurement must be performed during a data transfer time as claimed.

Applicant further argues that since the signal parameters in He are measured *periodically*, He fails to disclose measurement during a data transfer time as claimed. The examiner, however, disagrees. The fact that the signal parameters in He are measured *periodically* merely means that the measurement is not performed all the time (and when the measurement takes place, it is performed at real time (i.e., during a data transfer time as claimed)).

Applicant further argues that since the signal parameters in He are "measured over a measuring duration", He fails to disclose measurement during a data transfer time as claimed. The examiner, however, disagrees. It is not clear as to how measuring "over a measuring duration" automatically implies that this measurement must not be made during a data transfer time. In fact, in applicant's own invention signal parameters are also measured "over a measuring duration" (see "**When elapse of a measurement period T**" in the present specification, page 46 line 24 to page 47 line 2, and page 55 line 27 to page 56 line 5). Therefore, if applicant's argument were to be correct (which the examiner disagrees), then the signal parameters in applicant's invention must not be made during a data transfer time.

Regarding independent claims 33 and 72, they are discussed for the same reasons as set forth in independent claim 17 above.

Independent Claims 4, 16, 32, 55 and 71

Regarding independent claims 4, 16, 32, 55 and 71, they are discussed for the same reasons as set forth in independent claims 17, 33 and 72 above.

Independent Claims 19, 35 and 74

Regarding independent claims 19, 35 and 74, they are discussed for the same reasons as set forth in independent claims 17, 33 and 72 above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGUYEN VO whose telephone number is (571)272-7901. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nguyen Vo/
Primary Examiner, Art Unit 2618